

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:
	: No.
Petitioner	:
	:
v.	: Board Case Nos.:
	: 12-CB-225882
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,	: 12-CB-226328
LOCAL UNION NO. 1402, AFL-CIO	: 12-CB-226103
	: 12-CB-229319
Respondent	: 12-CB-230177

APPLICATION FOR ENFORCEMENT OF AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD
UPON STIPULATION OF THE PARTIES FOR CONSENT JUDGMENT

To the Honorable, the Judges of the United States
Court of Appeals for the Eleventh Circuit:

The National Labor Relations Board (the "Board"), pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(e)), applies to this Court for enforcement of its order against International Longshoremen's Association, Local Union No. 1402, AFL-CIO ("Respondent"), issued in Board Case Nos. 12-CB-225882, 12-CB-226328, 12-CB-226103, 12-CB-229319 and 12-CB-230177. The Board is entitled to enforcement because Respondent has expressly consented to entry of this judgment in a stipulation that Respondent entered into during the proceedings before the Board. In support, the Board shows:

A. Jurisdiction of this Court

This Court has jurisdiction over this application under Section 10(e) of the Act (29 U.S.C. § 160(e)). Venue is proper in this Circuit because the activities giving rise to this proceeding occurred in Florida. The Board's final order issued on January 14, 2020.

B. The Respondent Entered into a Stipulation Providing for Entry of an Order by the Board and a Consent Judgment by the Court

1. The Board entered an order against Respondent pursuant to a stipulation authorizing the Board to enter an order embodying its terms. The Board's order does not vary from those terms.

2. Paragraph VI of the stipulation authorized the Board to apply to an appropriate U.S. Court of Appeals for a judgment enforcing the Board's order and provided that Respondent "waives all defenses to the entry of the judgment . . ."

3. In support of this application, the Board is certifying and filing with this Court the record of proceedings before the Board, including the pleadings, stipulation, findings of fact, and order of the Board.

WHEREFORE, the Board respectfully requests that the Court, after serving a copy of this application upon Respondent, enter a consent judgment enforcing the

Board's order in full. A copy of the proposed consent judgment is attached.

/s/ David Habenstreit

David Habenstreit
Assistant General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 23rd day of January 2020

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JUDGMENT

THIS CAUSE was submitted upon the application of the National Labor Relations Board for the enforcement of a certain order on consent issued by it against Respondent, International Longshoremen's Association, Local Union No. 1402, AFL-CIO, its officers, agents, and representatives, on January 14, 2020, in Board Case Nos. 12-CB-225882, 12-CB-226328, 12-CB-226103, 12-CB-229319 and 12-CB-230177; and upon the record in that proceeding, certified and filed in this Court enforcing the order.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by the United States Court of Appeals for the Eleventh Circuit that the order of the National Labor Relations Board be, and the same is hereby enforced; and that the Respondent, International Longshoremen's Association, Local Union No. 1402, AFL-CIO, its officers, agents, and representatives, abide by and perform the directions of the Board set forth in its order. (See Attached Order and Appendix)

Judge, United States Court of
Appeals for the Eleventh Circuit

Mandate shall issue forthwith.

ENTERED:

NATIONAL LABOR RELATIONS BOARD

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL UNION NO. 1402, AFL-CIO

ORDER

International Longshoremen's Association, Local Union No. 1402, AFL-CIO,
Tampa, Florida, its officers, agents, and representatives, shall:

1. Cease and desist from:

- (a) Failing or refusing to refer hiring hall users to work according to its collective bargaining agreements and based on objective and established hiring hall rules and procedures.
- (b) Failing or refusing to refer hiring hall users for employment with Ceres Marine Terminals, Inc., or Logistec USA, Inc., employers with whom it has an exclusive hiring hall relationship, or causing those employers not to employ hiring hall users, for reasons that are arbitrary, discriminatory, or in bad faith.
- (c) Failing or refusing to timely respond to employee requests for information regarding the status of their grievances against any employers with which it has collective bargaining relationships.
- (d) Unilaterally removing an employee from Logistec USA, Inc.'s core gang.
- (e) Failing or refusing to process the grievances of employees it represents for reasons that are arbitrary, discriminatory, or in bad faith, or processing grievances in a perfunctory manner.
- (f) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action:

- (a) Within 14 days from the date of the Board's Order, the Respondent will make whole the employees named below for the loss of wages they suffered as a result of the Respondent's failure and refusal to refer them to work with Ceres Marine Terminals, Inc. on July 18, 2018, by payment to the employees of the amounts of backpay, interest, and compensation for excess tax liability set forth below opposite their respective names. No deductions shall be made from these amounts.

Name	Backpay	Interest	Excess Tax
Robert Cato	\$477.00	\$15.00	\$22.00
Frank Crum, Jr.	\$427.00	\$13.00	\$19.00
Lawrence Hemmingway	\$377.00	\$12.00	\$17.00
Charles Richards, Sr.	\$447.00	\$14.00	\$20.00
Ernest Richards, Jr.	\$477.00	\$15.00	\$22.00
Joseph Rolfe	\$477.00	\$15.00	\$22.00

- (b) Within 14 days from the date of the Board's Order, the Respondent will make whole employee Derrick Johnson for the loss of wages he suffered as a result of the Respondent's failure and refusal to refer him to work with Logistec USA, Inc. on the ship core gang commonly known as the Doster gang for the period from October 30, 2018 through March 22, 2019, by payment to him of \$2,962.00 in backpay, \$43.00 in interest, and \$5.00 in compensation for excess tax liability. No deductions shall be made from these amounts. The Respondent has referred Derrick Johnson to work for Logistec USA, Inc. in his former position on the ship core gang commonly known as the Doster gang and requested that Logistec USA, Inc. reinstate Derrick Johnson to that position. Logistec USA, Inc. has reinstated Derrick Johnson to that position.
- (c) Within 14 days from the date of the Board's Order, Respondent will make whole employee Derrick Johnson for the loss of pension, welfare, vacation and holiday benefits he suffered as a result of Respondent's failure and refusal to refer him to work with Logistec USA, Inc. on the ship core gang commonly known as the Doster gang for the period from October 30, 2018 through March 22, 2019, by contributing \$841.00 on behalf of Derrick Johnson to the Local 1402 (Tampa Banana Handlers) Pension, Welfare, and Vacation/Holiday Fund and directing said Fund to credit Derrick Johnson with 117 hours of seniority credit.
- (d) Within 14 days from the date of the Board's Order, request that Logistec USA, Inc. agree to arbitrate a grievance regarding the written warning issued to Stephen Whitehead by Logistec USA, Inc. on or about September 9, 2017, if said grievance cannot otherwise be resolved.
- (e) Within 14 days of service by the Region, post at its 707 E. Harrison Street, Tampa, Florida facility, and at all places at the facilities of Ceres in the Port of Tampa, Florida, and of Logistec USA, Inc. in Port Manatee, Florida, where Respondent normally posts notices to employees and members, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by Region 12, after being signed and dated by the Respondent's authorized

representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.

- (f) Within 14 days after service by the Region, the Respondent shall deliver to the Regional Director for Region 12 signed copies of the notice in sufficient number for posting by Ceres in Port of Tampa, Florida, and Logistec USA, Inc. in Port Manatee, Florida if Ceres and Logistec wish, in all places where notices to employees are customarily posted.
- (g) Within 14 days after service by the Region, the Respondent shall distribute copies of the attached notice marked "Appendix," after being signed and dated by the Respondent's authorized representative, to all officers and agents of the Respondent at the Respondent's facility located at 707 E. Harrison Street, Tampa, Florida.
- (h) Within 21 days after service by the Region, the Respondent shall file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply

APPENDIX

NOTICE TO MEMBERS

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join or assist a union
- Choose a representative to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to refer you for employment according to the terms of our collective bargaining agreements with employers and based on objective and established hiring hall rules and procedures.

WE WILL NOT fail or refuse to refer you for employment with Ceres Marine Terminals, Inc., or Logistec USA, Inc., or any other employers with which we have an exclusive hiring hall relationship, or cause any of those employers not to employ you, for reasons that are arbitrary, discriminatory, or in bad faith.

WE WILL NOT fail or refuse to timely respond to your requests for information regarding the status of your grievances against any employers with which we have collective-bargaining relationships.

WE WILL NOT unilaterally remove you from a Logistec USA, Inc. core gang.

WE WILL NOT fail or refuse to process the grievances of employees we represent in a manner that is perfunctory, or for reasons that are arbitrary, discriminatory, or in bad faith.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights under Section 7 of the Act.

WE WILL make whole Robert Cato, Frank Crum, Jr., Lawrence Hemmingway, Charles Richards, Sr., Ernest Richards, Jr., and Joseph Rolfe for the loss of earnings they suffered because they were not referred for work at Ceres Marine Terminals, Inc., on July 18, 2018.

WE HAVE referred Derrick Johnson to work for Logistec USA, Inc. in his former position on the ship core gang commonly known as the Doster gang and requested

that Logistec USA, Inc. reinstate Derrick Johnson to that position. Logistec USA, Inc. has reinstated Derrick Johnson in that position.

WE WILL make whole Derrick Johnson for the loss of earnings and benefits he suffered because he was not referred for work with Logistec USA, Inc. from on or about October 30, 2018 until on or about March 22, 2019.

WE WILL request that Logistec USA, Inc. agree to arbitrate a grievance regarding the written warning issued to Stephen Whitehead on or about September 9, 2017 by Logistec USA, Inc., if said grievance cannot otherwise be resolved.

**INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, LOCAL UNION NO. 1402, AFL-CIO**

The Board's decision can be found at www.nlrb.gov/case/12-CB-225882 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half St., S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



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CERTIFICATE OF THE
NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, authorized by Section 102.115, Rules and Regulations of the National Labor Relations Board, Series 8 (29 C.F.R.), certifies that the documents annexed hereto constitute the entire record of a proceeding had before the Board and known upon its records as Case Nos. 12-CB-225882, 12-CB-226328, 12-CB-226103, 12-CB-229319 and 12-CB-230177.

The attached documents are as follows:

<u>Date</u>	<u>Document Description</u>	<u>Pages</u>
01/14/2020	Board's Decision and Order, <i>International Longshoremen's Association Local Union No. 1402, AFL-CIO (Ceres Marine Terminals, Inc.) and Ernest Richards Jr. and Joseph Rolfe; International Longshoremen's Association Local Union No. 1402, AFL-CIO (Logistec USA, Inc.) and Stephen Whitehead and Derrick Johnson</i> , Board Case Nos. 12-CB-225882, 12-CB-226328, 12-CB-226103, 12-CB-229319 and 12-CB-230177	7

<u>Date</u>	<u>Document Description</u>	<u>Pages</u>
11/27/2019	Formal Settlement Stipulation, <i>International Longshoremen's Association Local Union No. 1402, AFL-CIO (Ceres Marine Terminals, Inc.) and Ernest Richards Jr. and Joseph Rolfe; International Longshoremen's Association Local Union No. 1402, AFL-CIO (Logistec USA, Inc.) and Stephen Whitehead and Derrick Johnson</i> , Board Case Nos. 12-CB-225882, 12-CB-226328, 12-CB-226103, 12-CB-229319 and 12-CB-230177 w/Exhibits	69

IN TESTIMONY WHEREOF, the Executive Secretary of the National Labor Relations Board, being duly authorized, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 23rd day of January 2020.

/s/ Roxanne Rothschild
Roxanne Rothschild
Executive Secretary
NATIONAL LABOR RELATIONS BOARD

(seal)

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CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's application for enforcement, proposed judgment and certificate of interested persons, in the above case, has this day been served by first class mail upon the following parties at the addresses listed below:

Barbara Mann, Guild Director
Willig, Williams & Davidson
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103

Joseph D. Richardson, Esq.
Willig, Williams & Davidson
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103

/s/ David Habenstreit

David Habenstreit
Assistant General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 23rd day of January 2020

SERVICE LIST

RESPONDENT'S COUNSEL:

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INVOLVED PARTY:

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REGIONAL DIRECTOR:

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RESPONDENT'S COUNSEL:

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RESPONDENT:

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